SINGAPORE TEXTILES INDUSTRIES LTD.

v.

SINGAPORE TRANSPORT SUPPLY SERVICE PTE. LTD.

HIGH COURT, SINGAPORE
FA CHUA J
[SUIT NO. 3473 OF 1981]
9 JANUARY 1986

BAILMENT: *Contract - Leasing Agreement - Implied term - Breach of - Loss of goods - Failure to keep goods safely - Burden and onus of proof.*

TORT: *Negligence - Servant/agent - Security and safety - Insurance - Burden and onus of proof.*

By an agreement in writing between the plaintiffs and the defendants in 1979 the plaintiffs rented from the defendants a certain area within the defendants' warehouse for the storage of the plaintiffs' goods. Six days before the expiry of the said agreement, on 25 October 1980, the plaintiffs went to the said warehouse to take out all the balance of their goods. The plaintiffs found a number of cartons of their goods missing. The plaintiffs allege that the defendants failed to keep their goods safely and that the loss was caused by the negligence of the defendants, their servants or agents. The plaintiffs are therefore claiming damages for the loss of the said goods. The defendants dispute that on 25 October 1980, the cartons of goods were missing.

Held:

[1] The defendants are bailees for reward and to excuse themselves, they must show that the loss was without any fault on their part or on the part of their servants.

[2] Nowhere in the said agreement is it provided that the defendants are to be responsible for the quantity of the goods of the plaintiffs stored in the designated area.

[3] The burden of proving the loss is on the plaintiffs and this the plaintiff have failed to do. Taking all the facts into account and the evidence of all the witnesses, the plaintiffs have not substantiated a single one of the particulars of negligence alleged in the statement of claim.

[4] The defendants have shown that the loss, if any, was not caused by any failure on their part to take reasonable care.

[Plaintiffs' claim dismissed with costs.]

JUDGMENT

FA Chua J:

The plaintiffs claim damages against the defendants for the loss of their goods stored in the defendants' warehouse at No. 12, Benoi Sector, Singapore. The plaintiffs allege that the defendants failed to keep their goods safely and that the loss was caused by the negligence of the defendants, their servants or agents.

By an agreement in writing between the plaintiffs and the defendants sometime in 1979 ("the said agreement") the plaintiffs rented from the defendants an area of approximately 6,000 sq. ft. within the defendants' warehouse ("the said warehouse") from 1 November 1979, to 31 October 1980, at a monthly rent of $4,200 for the storage of the plaintiffs' goods.

Pursuant to the said agreement, the plaintiffs subsequently delivered 1472 cartons of TC 45 "Golf" brand blended yarn and 1600 cartons of TC 45 Folex set yarn ("the goods") to the defendants for storage in the said warehouse.

On 25 October 1980, six days before the expiry of the said agreement, the plaintiffs went to the said warehouse to take out all the balance of the goods. They say that they found that 51 cartons of "Golf" brand yarn and 200 cartons of folex set yarn missing.

The plaintiffs plead that in breach of the express and/or implied term of the said agreement the defendants failed to keep the plaintiffs' said goods safely. Further or in the alternative the plaintiffs plead that the loss of their goods was caused by the negligence of the defendants, their servants or agents, in that they failed to:

(a) provide or ensure adequate security and safety for the goods;

(b) carry out regular checks on the goods; and

(c) insure the goods against theft or loss.

The following facts are not in dispute. Whenever the plaintiffs' goods were brought into the said warehouse, the defendants would issue a godown warrant acknowledging receipt of the specified number of cartons received for storage. Whenever the plaintiffs went to the said warehouse to take out their goods they would give a letter of authority to their transport agent and the defendants would act on the letter of authority and deliver the goods to the plaintiffs' transport agent. The defendants submitted for three months a monthly stock report to the plaintiffs showing the balance of the plaintiffs' stock in the said warehouse.

The defendants are bailees for reward. The law is clear that the defendants, to excuse themselves, must show that the loss was without any fault on their part or on the part of their servants.

Clause 5 of the said agreement provides that insurance cover for the plaintiffs' goods stored within the designated area is to be arranged by the plaintiffs, although adequate security measures and fire precautions are to be taken by the defendants to ensure safety of the goods. The godown warrant issued by the defendants had the words "Not Insured By Us" clearly stamped.

The plaintiffs have not insured their goods. The defendants, on the other hand, have employed a 24-hour security guard.

Nowhere in the said agreement is it provided that the defendants are to be responsible for the quantity of the goods of the plaintiffs stored in the designated area. It was never intended that the defendants should be so responsible as the rental was on floor area and not by package weight in which event the defendants would take out insurance cover. The godown warrants were issued only as a favour to the plaintiffs. The defendants say that in many cases where rental is by floor area the lessees have their own storekeeper in the said warehouse. The plaintiffs did not have their own storekeeper.

The plaintiffs have not substantiated a single one of the particulars of negligence alleged in the statement of claim.

In my view the defendants have shown that the loss, if any, was not caused by any failure on their part to take reasonable care.

The defendants dispute that on 25 October 1980, 51 cartons of "Golf" brand yarn and 200 cartons of Folex set yarn were missing. The defendants say that in actual fact they had no physical control over the quantities in stock. As a favour they submitted a monthly statement of stocks to the plaintiffs. Only three of such monthly statements were prepared and they were prepared from the defendants' records and the plaintiffs were asked to check and inform the defendants of any discrepancy. The last monthly stock report was as at 30 June 1980. The stock reports were for stocks not only in the said warehouse but also in the defendants' other warehouse at Jalan Tepong where the plaintiffs had also rented an area for storing their goods. The defendants say that the plaintiffs' stock records were not properly kept.

The plaintiffs say that in October 1980 they decided to move all the goods from the said warehouse and put them into the defendants' warehouse at Jalan Tepong. According to their stock book there were 490 cartons of "Golf" brand yarn at the said warehouse on the 25 October 1980. They wanted to move out only 450 cartons and they issued a letter of authority authorising their transport agent to collect 450 cartons of "Golf" brand yarn. When they went to collect only 436 cartons were available and 54 cartons were missing. They wrote to the defendants and later the defendants found 3 cartons and returned them.

The plaintiffs agree that there would be no time to take away 450 cartons in one day. The defendants say that all the goods were removed in two or three days. Now, how much goods went out of the store each day during those two or three days the defendants had no means of checking as they were moved in a hurry. If the plaintiffs had intended to pin responsibility for loss on the defendants they should at least have insisted on the defendants counting and checking on the goods which were taken out. According to the defendants the three cartons last delivered were loose pieces lying around and collected into three cartons.

The evidence of Dawson Chandra Raj, the defendants' storekeeper at the said warehouse, is that in October 1980 Koh Yock Teck, an employee of the plaintiffs, came with lorries and labourers and said that the plaintiffs wanted to take out all their goods and that the letter of authority would be given later. The letter of authority AB57 was handed to him two days later and it had been amended to "436 cartons" and "43600 lbs nett"

Koh Yock Teck, who could have been called, was not called by the plaintiffs to rebut the defendants' case which was put to the administrative manager of the plaintiff company.

The probabilities are that the letter of authority AB57 was handed to Dawson Chandra Raj after 25 October 1980, because the plaintiffs had to check the actual quantity which arrived at their store at Jalan Tepong and they found it necessary to amend the figures "450 cartons" to "436 cartons" and "45000 lbs" to "43600 lbs". The correction was done not by Koh Yock Teck but by the plaintiffs' general affairs officer Joseph Woo.

The extraordinary part of the plaintiffs' case is that although they wanted to take out all their goods and according to their stock book there were 490 cartons of "Golf" brand yarn, yet they alleged they issued a letter of authority authorising their transport agent to collect 450 cartons leaving 40 cartons behind. More extraordinary is that although they claimed that an additional 200 cartons of Folex set yarn were missing, they did not on 25 October 1980, or thereabouts, issue a letter of authority for their transport agent to collect those goods, as their intention was to clear all their goods from the said warehouse. The inference that can be drawn is that the plaintiffs' stock book showed that all they had left at the said warehouse were 450 cartons of "Golf" brand yarn. How could such a large amount of 200 cartons be overlooked? The plaintiffs stored their goods at two warehouses of the defendants

and this might have caused the confusion by the plaintiffs or else their stock book was not properly kept. According to Dawson Chandra Raj the plaintiffs had been taking their goods out from the Jalan Tepong warehouse (where there was no storekeeper) before 25 October 1980.

No stock-taking of the plaintiffs' goods in the said warehouse had ever been carried out by the plaintiffs or the defendants and the last statement of stock prepared from the defendants' records was as at 30 June 1980. The defendants' monthly stocks were for goods stored at both the warehouses. What physical stock there was after 30 June 1980, whether at Jalan Tepong or at the said warehouse was a matter for conjecture. There had been no complaint of any shortage in the past by the plaintiffs.

The burden of proving the loss is on the plaintiffs. This the plaintiffs have failed to do.

In the result the plaintiffs' claim must fail and it is dismissed with costs.

Also found at [1986] 2 CLJ 176